

**FINAL REPORT OF PROFESSIONALISM SUBCOMMITTEE**  
**OF THE PROFESSIONALISM COMMISSION**

**I. INTRODUCTION**

In response to the recommendation of the Maryland State Bar Association that all licensed Maryland attorneys be required to attend a professionalism course, the Maryland Court of Appeals, in 2003, appointed the Professionalism Task Force, chaired by the Honorable Lynne Battaglia. That Task Force, after conducting town hall meetings for lawyers and judges in each county of the State, submitted its report to the Court of Appeals on November 10, 2003. That report recommended the creation of a Professionalism Commission, whose purpose is to promote a higher level of professionalism as an important core value of the bench and the bar.

The Court of Appeals adopted this recommendation and, by Administrative Order entered by Chief Judge Robert Bell on February 17, 2004, created the Professionalism Commission. The Court challenged the Commission with the following tasks:

...4. **Functions.**

a. **Purposes.** The primary tasks of the commission are to develop a consensus about the definition of professionalism, to examine ways to promote professionalism among Maryland lawyers, and to provide sustained attention and assistance to the task of ensuring that the practice of law remains a high calling, enlisted in the service of client and public good.

The commission will pursue the findings and recommendations of the Professionalism Task Force, which should have a significant impact upon the future of litigation in this State.”

Over the months since its creation, the Commission has wrestled with this directive of the Court of Appeals, focusing initially on identifying the indicia of professionalism. As part of that undertaking, the Commission created a number of subcommittees, including this subcommittee.

This subcommittee was charged with the following responsibility contained in the Court of Appeals’ Administrative Order:

“Recommendation 3:

Drawing on the findings of the Professionalism Task Force, the Professionalism Commission should, as its first task, identify indicia of professionalism and develop standards of professional conduct to guide its work in the areas that it will explore and shall publish these standards to the Bench and Bar throughout the State.

In carrying out this charge, this subcommittee undertook to complete and did complete the following tasks:

- i. Collation of the results gathered from the town hall meetings conducted throughout the State of Maryland;
- ii. Examination of codes or creeds of professionalism developed in the State of Maryland;
- iii. Examination of the codes or creeds of professionalism and professionalism criteria developed in other states;

- iv. Investigation as to whether any primary data has been developed from juries, etc., as to professionalism of lawyers appearing in our courts;
- v. Review of research data and literature summarizing the results of other efforts to identify and determine the importance of the indicia of professionalism, including the American Bar Association Commission on Professionalism Report entitled "... In The Spirit of Public Service - Blueprint For Rekindling of Lawyer Professionalism" (1986) (The "ABA Report"); and
- vi. Developing certain consensus points regarding our investigation and efforts and soliciting the input of the entire Commission on those consensus points.

This report will provide a synopsis of our conclusions. So as to avoid duplication, we have not reproduced our First and Second Interim Report presented to the Professionalism Commission on May 12, 2004 and July 21, 2004, respectively.

## **II. IMPORT OF THIS UNDERTAKING**

As our subcommittee has gone about the task of seeking to define the indicia of professionalism, we have consistently asked ourselves the question: What is the importance of this undertaking? We certainly are aware, as a subcommittee, and the Commission certainly is aware that there are those who would trivialize this exercise as having little practical import on the day-to-day existence of lawyers in this State and in the country. As a subcommittee, we have reached exactly the opposite conclusion; namely, that recognizing, understanding and adhering to the elements of professionalism

for lawyers and judges not only is an important undertaking, but is critical to the continuing function of “the rule of law” in the United States.

Perhaps the best articulation of the import of this undertaking can be found in the work of two distinguished professionals, Timothy P. Terrell and James H. Wildman, who authored an article in the Emory Law Journal in the Spring of 1992 entitled “Rethinking Professionalism”, 41 Emory L.J. 403 (1992). In that article, the authors, who had examined many of the same issues this subcommittee has been examining, asked the question:

“Why does anyone care about the ‘professional tradition’ of lawyers in the first place; what justifies a careful inquiry into this profession when we are not similarly concerned with the ‘heritage’ of ... plumbers or prostitutes; why should lawyers be interested in establishing aspirational principles for themselves that reach beyond the present standards of ethics codes?”

41 Emory L.J. at 422.

The answer these two authors provide to this fundamental question is very instructive as to the import of this effort in Maryland. The authors responded to this inquiry with the following insightful comment:

“Lawyers are remarkably important in our culture, therefore, because they are the ‘gatekeepers’ to this vital form of social cohesion. Lawyering exists as a profession to facilitate and control access to rules and courts that channel and temper our relations with each other. Moreover, in order to perform those important functions well, lawyers have long been granted a unique professional independence – an independence from regulation by others in society – so that their work within the legal system will be as unencumbered by extraneous pressures as possible.”

41 Emory L.J. at 423.

As background for their conclusion, the authors explained that a variety of societal factors play a role in how our system of justice is perceived:

“The answer, surprising to some, lies not within the profession itself, but outside it – in the law as a functioning social institution. Lawyering is a distinctive occupation with unique moral requirements because lawyers have established a special relationship to a fundamental aspect of our culture. Law, for Americans in particular, is not simply a set of rules and regulations that guide our behavior from time to time. It is far more central to our lives: the legal system embodies our last remaining vestige of a sense of ‘community’ – of shared values and expectations. All the other dimensions of our lives – race, religion, education, the arts, regional loyalty, and so on – divide us as much as they join us together because they are based on matters of ‘substance’ on which we so often disagree. No single social theme or set of themes could identify, for example, the ‘community’ of New York City or Los Angeles or even Des Moines. The traditions, heritage, and perspectives of Americans are now so disparate and isolated within ever smaller subcommunities that no common purpose, direction, or moral values connect us fundamentally.

Except our system of law. Not any particular law, of course, but the system as a whole that embodies the ‘rule of law’ in our society (in contrast to a despotic ‘rule by fiat’). Citizens of the United States, almost uniquely in the world, have come to respect the regularity, consistency, and basic justice over time of the officially promulgated rules and principles that regulate our conduct and redress our grievances. Evidence of this attitude can be found simply in the way we talk: We all now habitually use the characteristic ‘rights’ language of the law in describing our relationships with one another. Ironically, then, we are connected to each other in the nature of the claims we make against each other: we do not ordinarily resort to self-help or depend upon various informal social groups like churches, families, or friends to take up our cause. Instead, we invoke our system of law, both because we have come to have faith in it and because we have largely abandoned other alternatives. American ‘community’, consequently, now means only our ingrained expectation of official non-arbitrariness.”

Ultimately, the professional independence that accompanies a lawyer’s role as a gatekeeper is encumbered by the duty the lawyer has to the rule of law:

But this independence has come with a price. The lawyer’s professional latitude, because it is justified by the importance of the law rather than the importance of lawyers themselves, is granted by society in exchange for the implicit promise by lawyers that their autonomy will be used to enhance the social function of the law. That is, the lawyer’s special

pledge is that he or she will help the legal system remain the centerpiece of our fragile sense of community, help it continue to function within our culture as the crucial mechanism for social cohesion and stability.

That promise is the true essence and foundation of the concept of professionalism. Our heritage as lawyers – the ‘living faith’ that links us with our predecessors, and that we must in turn teach to our successors – is the responsibility to recognize, honor, and enhance the rule of law in our society. (emphasis supplied)

41 Emory L.J. at 422-3.

Our subcommittee shares the sentiments expressed in the foregoing. We, as the lawyers and judges in this community, have the obligation to be caretakers for a system of justice and for a rule of law which distinguishes this civilization and provides protection against anarchy.

Our efforts, we submit, are time sensitive. There is significant evidence of erosion of values throughout our culture. Some would describe the current state of “community” in the United States as being promotive of a culture of irresponsibility. We have an obesity epidemic among our children, gang warfare in the schools of many of our urban areas, violence throughout the culture and political polarization in the country not often matched in memory. One of the elements evident in this erosion is a growing disrespect for many of our institutions of government, including the system of justice. Unprofessionalism among practicing lawyers and judges certainly is a factor which has contributed to the erosion of respect for our system of justice. If this erosion continues unabated, it bodes poorly for the future of the rule of law in this country.

Our subcommittee believes that it is incumbent upon the lawyers and judges to be leaders in the restoration of the sense of respect that our citizens have for the independence and integrity of the system of justice.

### **III. THE MEANING OF PROFESSIONALISM**

When asked by this Commission to identify the indicia of professionalism, this subcommittee considered itself to have been assigned a daunting task. Professionalism, in the eyes of many, is an illusive concept incapable of precise definition, but, ironically, (perhaps like pornography), is something you recognize when you see it. We are not the first to have recognized the difficulty of coming to consensus as to the indicia of professionalism. In 1986, the ABA, in its report, stated as follows:

“Professionalism is an elastic concept, the meaning and application of which are hard to pin down. That is perhaps as it should be. The term has a rich, long standing heritage, and any single definition runs the risk of being too confining.” ABA Report at page 10.

However, as we have gone about the task of examining codes and creeds of professionalism from around the country and throughout this State, reviewing literature and examining other similar undertakings such as the Character Counts program in our public schools, we have become increasingly convinced that professionalism is really a value system comprised of identifiable indicia. One thing that has struck us in our examination of the various codes and creeds of professionalism and reports, studies and articles on professionalism, is the extent to which there is significant overlap in those values or indicia which are seen as earmarks of professionalism. We have set forth in chart form below, the indicia of professionalism identified by the ABA in its 1986 study, by the authors of the Emory Law Journal article and those most frequently mentioned

elements by the Maryland lawyers in the Professionalism Task Force's outreach efforts.

One cannot help but be struck by the consistency and overlap in the descriptions:

<b><u>ABA 1986</u></b>	<b><u>MARYLAND LAWYERS (OUTREACH)</u></b>	<b><u>EMORY LAW JOURNAL (1992)</u></b>
Integrity Competence Fairness Independence Courage Devotion to Public Interest	Competence Integrity Service to Community (Pro Bono) Civility Respect Honesty/Trustworthiness	Ethic of Excellence Integrity Respect for system and rule of law Respect for other lawyers (civility) Accountability Responsibility to ensure adequate distribution of legal services

These indicia or values also show remarkable correlation to the six pillars of character which have been developed by the Josephson Institute of Ethics in its Character Counts program used in the public school systems in various counties in the State of Maryland and elsewhere. Those six pillars of character are:



## **SIX PILLARS**

Trustworthiness  
Respect  
Responsibility  
Fairness  
Caring  
Citizenship

Such overlap and consistency is not accidental in our view. We think it is important to acknowledge this consistency and recognize that professionalism, no matter how you describe it, really boils down to a certain value system which we would synopsize by the word “RESPECT.”

R - RESPONSIBILITY

E - EXCELLENCE

S - SERVICE

P - PROMOTES FAIRNESS

E - ETHICAL BEHAVIOR

C - CIVILITY/COURTESY

T - TRUSTWORTHINESS

#### **IV. CONSENSUS ITEMS**

We have previously provided to the Commission certain consensus points agreed upon by our subcommittee. We have refined those consensus points based upon the comments we received from Commission members in August. They are as follows:

1. The courts of the State must endorse, support, and promote the standards and indicia.
2. Professionalism must begin before an individual passes the bar examination and continue throughout one's legal career. The standards and indicia of professionalism should be an inherent part of law school instruction and woven into continuing legal education programs.
3. This Commission and all lawyers and judges in this State need to convey the message that professionalism promotes success and is expected behavior.
4. The Commission should have an ongoing role in encouraging adherence to professional standards and indicia and in implementing the standards through programs and sanctions.
5. Mentoring and training are core elements that must be incorporated into any plan for promoting and implementing the standards of professionalism. Only through repeated practice of professional behavior does courtesy and ethical conduct become an integral part of every aspect of lawyering.
6. The standards reflect a respect for the rule of law and those involved in its promotion, but do not purport to unduly restrict personal style and flair.

## **V. CONCLUSION**

This subcommittee remains convinced that an undertaking to define the indicia of professionalism and to develop standards of professionalism for the lawyers and judges in this State is a critical one. We are at an important juncture in the history of this country. There is an erosion of respect for institutions of our government, including our courts. Lawyers and judges need to be part of the effort to reverse this trend. To accomplish this, we need first to examine ourselves and recommit to the value system which distinguishes lawyers as professionals and as the caretakers for our rule of law in this country. We believe that this undertaking starts at home with the lawyers and judges in this State.

The authors of the Emory Law Journal said it well, in our view, when they stated:

**“The principal purpose of professionalism is to generate and maintain a core sense of self-respect within lawyers individually and the Bar generally. The respect of the public can be achieved only after that internal effort has been successful.”** (Emphasis added)

41 Emory L.J. at 432.

Our subcommittee believes that the buck stops here. We, the lawyers and judges on this Commission, should decide where we go from here. This subcommittee has provided you its best guidance on what it believes to be the indicia of professionalism and has developed a model of the standards and indicia of professionalism and described the workings of this value system in our daily lives. It is now up to the balance of this Commission and its respective subcommittees to determine how such standards and indicia should be fostered in our law schools, the courts, the Bar Association and through enforcement mechanisms for inappropriate conduct. We look forward to being part of

the efforts of the balance of the Commission to take this framework and determine how it should be applied in the contexts of our law school education and our daily lives as lawyers and judges.

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Subcommittee Members

Attachment: Standards and Indicia of Professionalism

## **Standards and Indicia of Professionalism**

Professionalism is that combination of values that distinguish lawyers as the caretakers of the rule of law in our society.

### **Preamble**

When each lawyer in this country is entrusted with the privilege of practicing law, he or she takes a firm vow or oath to uphold the constitution and laws of the United States. As members of such a profession, lawyers enjoy a distinct position of trust and confidence but, concomitantly, have the significant responsibility and obligation to be caretakers for the system of justice which is essential to the continuing existence of a civilized society. Each lawyer, therefore, as a custodian of the system of justice, must be conscious of this responsibility and exhibit traits that reflect his or her personal responsibility to recognize, honor and enhance the rule of law in this society. The standards and characteristics set forth below are representative of a value system that we must demand of ourselves as professionals. These standards and indicia are not intended to serve as a basis for discipline or civil action, but are designed to maintain and enhance the role of legal professionals as the protectors of the rule of law in this country.

## General Aspirational Ideals<sup>1</sup>

**“As a lawyer,** I will aspire:

- (a) To put fidelity to clients and, through clients, to the common good, before selfish interests.
- (b) To model for others, and particularly for my clients, the respect due to those we call upon to resolve our disputes and the regard due to all participants in our dispute resolution processes.
- (c) To avoid all forms of wrongful discrimination in all of my activities including discrimination on the basis of race, religion, sex, age, handicap, veteran status, or national origin. The social goals of equality and fairness will be personal goals for me.
- (d) To preserve and improve the law, the legal system, and other dispute resolution processes as instruments for the common good.
- (e) To make the law, the legal system, and other dispute resolution processes available to all.
- (f) To practice with a personal commitment to the rules governing our profession and to encourage others to do the same.
- (g) To preserve the dignity and the integrity of our profession by my conduct. The dignity and the integrity of our profession is an inheritance that must be maintained by each successive generation of lawyers.
- (h) To achieve the excellence of our craft, especially those that permit me to be the moral voice of clients to the public in advocacy while being the moral voice of the public to clients in counseling. Good lawyering should be a moral achievement for both the lawyer and the client.
- (i) To practice law not as a business, but as a calling in the spirit of public service.”

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<sup>1</sup> Based upon the model from the State of Georgia.  
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## **Specific Standards and Indicia**

### **Indicia of Professionalism:**

R	Responsibility
E	Excellence
S	Service
P	Promotes fairness
E	Education
C	Civility/Courtesy
T	Trustworthiness

### **Responsibility & Trustworthiness** (integrity, honesty, trust)

1. Punctuality in appearances and filing deadlines promotes the credibility of a lawyer. Tardiness and neglect denigrate the individual as well as the legal profession.
2. Personal integrity is essential to the honorable practice of law. Each lawyer should ensure that clients, opposing counsel, and the court can trust that the lawyer will keep all commitments and perform the tasks promised.
3. Honesty and candid communications promote credibility with the court, with opposing counsel, and with clients.
4. A lawyer should resist external monetary pressures that may cloud his professional judgment.

### **Promotes fairness**

1. A lawyer should act fairly in all dealings as a means of promoting the system of justice established in this country.
2. An excess of zeal may undermine a client's cause and hamper the administration of justice. A lawyer can zealously advocate the client's cause in a manner that remains fair and civil.
3. Zeal requires only that the client's interests are paramount and utilizes

negotiation and compromise to achieve a beneficial outcome. Yelling, intimidating, and issuing ultimatums using an “all or nothing” approach amounts to nothing more than bullying, not zealous advocacy.

4. A lawyer should seek to maintain sympathetic objectivity when advising a client, so that the client receives a comprehensive view of the legal aspects of the situation presented to the lawyer.
5. A lawyer should not allow any action or decision to be governed by a client’s improper motive and should challenge a client whose wishes are unethical or ill advised. This becomes especially important when deciding whether to consent to an extension of time requested by an opponent—the attorney makes that choice based on the effect, if any, on the outcome of the client’s case and not based on the acrimony that may exist between the parties.
6. A lawyer should negotiate in good faith in an effort to avoid litigation and should suggest alternative dispute resolution when appropriate.
7. Litigation tools should be used to strengthen the client’s case, and a lawyer should avoid using litigation tactics in a manner solely to harass, intimidate, or overburden an opposing party.
8. A lawyer should explicitly note any changes made to documents submitted for review by opposing counsel. Fairness is undermined by attempts to insert or delete language without notifying the other party or his attorney.

## **Civility and Courtesy**

1. Professionalism requires civility in all dealings, showing respect for differing points of view, and demonstrating empathy for others.
2. Courtesy does not reflect weakness, but promotes effective advocacy, by ensuring that all parties have the opportunity to participate in the process without personal attacks or intimidation.
3. Maintaining decorum in the courtroom is neither a relic of the past nor a sign of weakness, but an essential component of the judicial process.
4. Prepare scrupulously for meetings and court appearances and show respect



for the court, opposing counsel, and the parties through courteous behavior and respectful attire.

5. Courtesy and respect should be demonstrated in all contexts, not just with clients and colleagues, or in the courtroom, but with support staff and court personnel.
6. Hostility between clients does not become grounds for an attorney showing hostility or disrespect to a party, opposing counsel, or the court.
7. Patience enables a lawyer to exercise restraint in volatile situations and to diffuse anger, rather than to elevate the tension and animosity between parties or attorneys.

## **Service**

1. A lawyer serves the public interest by clearly communicating with clients, opposing counsel, judges, and members of the public.
2. Consideration should be given to the impact on others when scheduling events and reasonable requests for schedule changes should be accommodated if it does not impact the merits of the case.
3. Maintain an open dialogue with clients and opposing counsel.
4. Respond to all communications promptly, even if more time is needed to locate a complete answer. Delays in returning telephone calls may leave the impression that the call was unimportant or that the message was lost and leads to an elevation in tension and frustration and less effective communication.
5. A lawyer should keep a client apprised of the status of important matters affecting the client. A lawyer should inform the client of the frequency with which information will be provided (some matters will require regular contact, while others will trigger only occasional communication).
6. Always explain a client's options or choices with sufficient detail to help the client make an informed decision.
7. All interactions with opposing counsel, parties, staff, and the court should reflect a spirit of cooperation and compromise. This requires a reduction in

the win/loss approach to issues and an increase in mediation and achieving success for all involved.

8. All lawyers should accept the responsibility personally to ensure that justice is available to all citizens of this country, not only to those of financial means.

### **Education and Excellence**

1. A lawyer should make constant efforts to expand his legal knowledge and to ensure familiarity with changes in the law that affect a client's interests.
2. As a practitioner of a learned art, a lawyer has a responsibility to promote the image of the legal profession by educating each client and the public regarding the principles underlying the justice system and by conveying to everyone the importance of professionalism.
3. A lawyer should attend continuing legal education programs throughout his career to demonstrate a willingness to expand his knowledge.
4. A senior lawyer should accept the role of mentor and teacher, whether through formal education programs or individual mentoring of newer attorneys.
5. Mentoring includes the responsibility of setting a good example for another lawyer as well as an obligation to ensure that each mentee learns the principles enunciated in these standards and indicia and adheres to them in practice.